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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,309	12/02/2003	David Andrew Dalton	9454	3111

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/726,309

Applicant(s)

DALTON ET AL.

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received:
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Terminal Disclaimer***

The terminal disclaimer filed on 28 December 2004 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of 10/155,338 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 103***

Claims 1-5 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vidkjaer, U.S. Patent 6,733,803, in view of The Encyclopedia of Polymer Science and Technology (herein referred to as Encyclopedia).

In regard to claims 1 and 5, Vidkjaer discloses a container comprising a longitudinal axis, a closed bottom, an open top, and a body having an enclosed perimeter between the bottom and the top (7), wherein the bottom, top, and body together define an interior volume (see figure 1); an outwardly facing annular protuberance (6) disposed upon the body (2), the annular protuberance being continually disposed around the perimeter of the body proximate to the top wherein the protuberance forms a surface external to the body, the surface being substantially perpendicular to the longitudinal axis (see figures 1 and 2); and a flexible closure (7) removably attached and sealed to the annular protuberance (column 2, lines 38-52).

Vidkjaer discloses that the container is thermoformed, but does not specifically disclose that it is blow-molded. Encyclopedia teaches the use of polyolefins for food packaging applications and applications involving blow molding (see page 328, table 20 and page 323). As Vidkjaer discloses that the container is made of plastic, and more specifically of polyethylene and polyester (column 2 lines 33-38), it would have been obvious to form the container through blow molding, which was a method conventionally used with plastics in food packaging applications.

In regard to claims 2 and 3, Vidkjaer discloses that the flexible closure is a metal, which is interpreted to be a foil (column 2, line 48).

In regard to claim 4, Vidkjaer discloses a one-way valve (8) disposed on the flexible closure (column 4, lines 63-68).

In regard to claims 15 and 16, Vidkjaer disclose the container having regions of deflection (3) on it (column 4, lines 56-60). Vidkjaer discloses that the ribs on the container are for reinforcement and it is interpreted that they would be responsive to an internal or external force on the container.

In regard to claims 17 and 18, it is noted that the intended use of the container does not patentably distinguish the structure of the container, since a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Since the prior art structure of Vidkjaer is capable of holding coffee, it meets these claims.

In regard to claims 19 and 20, Vidkjaer discloses that the container is made of polyethylene and polyester. As evidenced by Mark's Standard Handbook for Mechanical Engineer, 10<sup>th</sup> Edition, polyester has a tensile modulus of 400-600 ksi and polyethylene has a tensile modulus of 7-158 (depending on the polyethylene type), therefore it follows that composite of the polyester/polyethylene would have a tensile modulus between 35 and 650 ksi. As such, absent a showing to the contrary, it would have been expected that the annular protuberance of Vidkjaer would translate the force of a load in the manner claimed.


Claims 1-7, 11-14, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruke, U.S. Patent 3,944,127, in view of The Encyclopedia of Polymer Science and Technology.

In regard to claims 1, 5, 19, and 20, Bruke discloses a container comprising a longitudinal axis, a closed bottom, an open top, and a body having an enclosed perimeter between the bottom and the top, wherein the bottom, top, and body together define an interior volume (see figure 1); an outwardly facing annular protuberance (7) disposed upon the body, the annular protuberance being continually disposed around the perimeter of the body proximate to the top wherein the protuberance forms a surface external to the body, the surface being substantially perpendicular to the longitudinal axis (column 6, lines 1-4); and a flexible closure removably attached and sealed to the annular protuberance (column 6, lines 1-4, 15-30 and column 4, lines 15-30).

Bruke discloses the container being made of plastic (column 5, lines 45-50), but not specify a plastic. Encyclopedia teaches the use of polyolefins for food packaging applications and applications involving blow molding (see page 328, table 20 and page 323). Encyclopedia teaches specifically the use of high density polyethylene, which has a tensile modulus of 60,000-150,000 psi (see page 305 and page 328, Table 20). Encyclopedia teaches that polyethylene is a very widely used plastic that is inexpensive and has low chemical reactivity (see page 275 and 299-300).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the plastic material of Encyclopedia for the plastic of Bruke since Bruke does not specify a particular plastic to use and therefore, the ordinarily-skilled artisan would have necessarily referred to teachings of known plastics in the art in order to produce the container, such as that of Encyclopedia. Encyclopedia specifically states that high density polyethylene disclosed therein may be used for blow-molded food packaging applications, and thus it would not have involved an inventive step for one of ordinary skill in the art to have utilized high density polyethylene for the container of Bruke, especially since polyethylene is a widely used, inexpensive and chemically resistant material.

In regard to claims 2, 3, 6, and 7, Bruke discloses that the flexible closure is a multilayered structure comprising layers of polyethylene and polyvinylidene chloride, with the polyethylene layer on the outside wherein the polyvinylidene chloride is considered the barrier layer (column 4, lines 48-65). Bruke also discloses the use of a metal in the closure layer, which is interpreted to be a foil (column 5, lines 10-11).

In regard to claim 4, Bruke discloses a one-way valve  disposed on the flexible closure (column 5, lines 26-40).

In regard to claims 11-14, Bruke discloses the use of an overcap (25, 26) on the container (figures 19 and 20). The overcap as disclosed by Bruke contains a rib (26) and an inner dome portion (25) and it is interpreted from the figures that the rib has a height as least equal to the maximum displacement of the dome portion. Bruke discloses that the overcap is made of plastic (column 7, lines 20-35). It would have been obvious to use a polyolefin as the plastic for the reasons stated above in regard to the container.

In regard to claims 17 and 18, Bruke discloses the container holding coffee (abstract).

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruke, in view of The Encyclopedia of Polymer Science and Technology, as applied above, in further view of Ota, U.S. Patent 4,890,752. Bruke in view of Encyclopedia discloses all the features of the instantly claimed invention except for a handle on the container. Ota teaches a plastic container wherein the body has a handle disposed thereon (figures 1-5 and column 3, lines 31-38, 13-16), the handle being integral with the body (figures 1-5 and column 2, lines 35-56) and wherein the handle is substantially parallel to the longitudinal axis of the container (figures 1-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to put a handle as taught by Ota on the container as disclosed by Bruke in view of Encyclopedia since both are directed to rigid containers for food and the handle would aid in holding the

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container without deforming the container, as suggested by Ota (column 1, lines 36-68 and column 2, lines 1-2).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-




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1088. The examiner can normally be reached on Monday-Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK

  
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